

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

DERRICK L. GARRETT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-20-619-J
	)	
SCOTT CROW, <sup>1</sup>	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a state prisoner appearing pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. [Doc. No. 1]. The matter was referred for initial proceedings to United States Magistrate Judge Gary M. Purcell consistent with 28 U.S.C. § 626(b)(1)(B), (C) and Respondent filed a motion to dismiss based on failure to exhaust state court remedies and a brief in support [Doc. Nos. 8, 9]. On review, Judge Purcell recommended that Respondent's motion be granted. [Doc. No. 11]. Despite being cautioned that he must file any objection no later than November 17, 2020, *see id.*, Petitioner did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Cassanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).<sup>2</sup>

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 11], GRANTS Respondent's motion to dismiss based on failure to exhaust state court remedies [Doc.

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<sup>1</sup> Petitioner is currently incarcerated in Cimarron Correctional Center, a private prison facility. Thus, Scott Crow, the current Director of the Oklahoma Department of Corrections, is substituted for the State of Oklahoma.

<sup>2</sup> It appears that Plaintiff never received the Report and Recommendation because he failed to update his address for the Court's records. [Doc. No. 12]. However, Plaintiff bears the responsibility for updating his contact information, therefore his inability to receive filings does not alter the outcome in this case. *See Theede v. U.S. Dep't of Labor*, 172 F.3d 1262 (10th Cir. 1999).

No. 8], and DISMISSES the petition for writ of habeas corpus [Doc. No. 1]. Because Petitioner has filed a mixed petition, i.e., one containing both exhausted and unexhausted claims, the petition shall be dismissed without prejudice unless, within 30 days of this Order, Petitioner files an amended petition raising only the exhausted claim.

IT IS SO ORDERED this 7<sup>th</sup> day of December, 2020.



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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE